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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,205	03/11/2004	Henri Waelbroeck	28655.001	7411
32137 7590 11/09/2010 PATENT DOCKET CLERK COWAN, LIEBOWITZ & LATMAN, P.C. 1133 AVENUE OF THE AMERICAS NEW YORK, NY 10036				
EXAMINER EBERSMAN, BRUCE I				
ART UNIT 3691		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/799,205

Applicant(s)

WAELEBROECK ET AL.

Examiner

BRUCE I. EBERSMAN

Art Unit

3691

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 August 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 14-21 and 23-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 4-5, 14-21, 23-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB-06)
Paper No(s)/Mail Date 9/22/10
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claims 1,3-5,14-21,23-26 are presented for examination. Applicant filed an amendment on 8/23/10 amending claims 1, 14, and 20, canceling claims 2, 6-13, and 22 and adding claims 24-26. After careful consideration of the applicant's amendments and arguments, the examiner finds the applicant's arguments to be moot in view of new grounds of rejection

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,3-5,14-21,23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 7162447 to Cushing in view of Patent Publication 20030093343 to Huttenlocher, "The Journal of Portfolio Management, Structural Changes in Trading Stocks" by Bartley J Madden, 1993 and W0 02/097589 (Cleary)

As per claims 1 and 14 Cushing discloses;

Calculating with a first processor (see other citations to computers)

(allowing) one or more users of a system accumulation period to receive orders in a security; (acceptance period for orders col. 4, lines 40-50, during the acceptance period orders are accumulated)

electronically receiving market data including prices for said security, and calculating a reference price based at least in part on said market data; (reference price based on market, (col. 10, lines 1-20, when the market is open, the reference price is based on the current market price)

electronically storing said reference price in a computer readable medium; (col. 10, lines 1-20, the invention can be performed and reference price calculated with one or more computers which would contain computer readable medium)

electronically receiving a first order for said security from a first user, wherein said first order is a sell order that comprises a first price limit and a first quantity limit;

(col. 5, lines 1-20, limit orders, the system appears to be able to accept a first order as a buy or a sell, while examples in col. 6 bottom start with the buyer, col. 10, lines 40-65 appreciates that reasonable modifications or modifications might be made. The examples are interpreted as just that, in a modern market forum, the buyer or seller could be the first to introduce an order)

electronically storing said first order in a computer readable medium; (col. 3, lines 35-40, orders are stored in a computer database)

electronically receiving a second order for said security from a second user, wherein said second order is a buy order that is contra to said first order

and comprises a second price limit that is less than said reference price (example 2, see col. 7, lines 1-20, the explanation says that the orders may cross or conversely, the orders can be mismatched, such that the buyer as in this limitation is offering less than market. In the example 2 the buyer is offering to buy for 50 and the seller is offering to sell at 50.30, bottom of col. 6 likewise explains that where no buy sell orders intersect, a reference price can be determined (see 55-65, which would be in the case where the buyer wants to offer less than the reference price where the reference price is market price)

and a second quantity limit; (col. 5, lines 1-20, see also, example 1, col. 6, lines 55-65, the examples show the first orders to be sell, however, it was also discussed that in a market, buy or sell orders could be first and that reasonable variations would be contemplated, per col. 10 lines 40-65)

electronically storing said second order in a computer readable medium; (col. 3, lines 35-40, orders are stored in a computer database)

executing with a second processor a trade comprising said first order and said second order at a trade execution price

(col. 10, lines 1-20, a reference price based on market can be used to execute orders, further, col. 10, lines 49-60, results can be constrained to be within the bid offer spread of the overall market, the trade execution does not have to be the market, likewise because it is constrained with the bid/offer spread or , thus, the system can also establish a different price than reference price for execution)

and wherein said first and second processors may be the same processor. (one or more computers are utilized, col. 10, lines 1-10)

at the expiration of said accumulation period, (col. 5 lines 60-68, order acceptance period begins and then ends col. 10, lines 60—66)

(col. 10, the reference price may serve as a price of execution but, the price may also be different than the reference, col. 10 lines 1-25, thus, it may be different)

wherein said trade execution price complies with said first price limit and said second price limit, (col. 5, lines 30-40, limit prices are utilized and where utilized would be complied with)

Cushing does not explicitly disclose;

electronically notifying; said first user that a contra order has been placed in the system; (execution at a price) that is different from said reference price (assuming the reference price is not the market),

wherein said trade execution price is calculated to minimize a difference between said reference price and said trade execution price,

Huttenlocher teaches a system (background) that was known in the art at the time of his invention called ITG's Posit where trades could be conducted at (mid) market price of the stock based on current market pricing. (0005). If the two limit orders are correctly positioned, around the market price which could also be used as the reference (market based in part on the reference), then if the crossing is done at market center, then the execution will minimize the difference between the market and the reference price.

It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to combine the block trading method of Cushing with the parasitic pricing method of Huttenlocher for the motivation of simple and efficient pricing. (0005)

Cushing and Huttenlocher do not explicitly disclose electronic buyer notification and wherein said trade execution price is different from said reference price.

The Journal of Portfolio Management teaches a large block system where notification can be made to potential customers of a contra order. (col. 24, Last paragraph)

It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to combine the disclosure of Cushing with the notification teachings of the Journal of Portfolio Management for the motivation of providing lower trading costs by alerting buyers to trading opportunities. (p. 20 col. 2, para. 2)

Cushing, Huttenlocher and the Journal of Portfolio Management do not explicitly disclose;

an execution price that is different from said reference price (assuming the reference price is not the market).

Cleary teaches a system where an execution price is different from said reference price (assuming the reference price is not the market). (p. 11 bottom – p. 12 top disclose price improvement where the buy order can be reduced to the national best offer price for example, by adjusting the sell and buy in such a manner, buyers/sellers can receive prices within the NBBO, if the buy is less than reference the sell would have to be less

than the buy to create a cross of two limits, if the buy/sell are within NBBO then they could be crossed at a price that is different from market midpoint but within the NBBO, a different market range. It would therefore have been obvious to one of ordinary skill in the art to incorporate the price improvement teachings of Cleary with the market system of Cushing for the motivation of providing the best execution while respecting customer limits. (p2 bottom)

Claim 20 is rejected under similar reasoning as claims 1, 14.

Claims 24, 25 and 26 contain variations on the same theme for example where the sell order is greater than the reference as opposed to the buy order below reference. Also the order of the buy and sell order may be different. However, the general concept and applied references would be anticipated in the same manner as claims 1, 14.

As per claim 3, Cushing discloses; a predetermined price discovery period (col. 3, lines 30—50) Cushing does not explicitly disclose notification for the purpose of allowing an

increase in price aggression. (ie. improve price bid/offer). The journal of portfolio Management. P. 23, col. 2 discloses yellow light trading which notifies market participants of a block order so that they could take advantage of the block trade by bidding or improving their price.

It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to combine the time period disclosure of Cushing with the notification teachings of The Journal of Portfolio Management for the motivation of providing lower trading costs by alerting buyers to trading opportunities. (p. 20, col. 2, para. 2)

As per claim 4, Cushing discloses;
calculating a reference price for said security based at least partially on said market data; (col. 9, lines 55-65) .

As per claim 5, Cushing discloses a reference price as important to the transaction system. (col. 9, lines 55-65).

As per claim 15, Cushing (col. 3, lines 5-20) discloses order acceptance and that traders are made aware of the time periods when they can place orders. Cushing does not explicitly disclose an electronic notification prior to the order placement. Huttenlocher teaches that the participants can be communicated (notified) via web browsers of for example orders. (0098) It would therefore have been obvious to one of

ordinary skill in the art at the time of the invention to combine the communication disclosures of Cushing with the electronic notification of Huttenlocher for the purpose of notifying other trading participants when a aggressively price order is pending in the system without disclosing the specific party and position. (see also Journal of Portfolio Management – Yellow light, notification of contra orders)

As per claim 16, Cushing discloses predetermined times (col. 3, lines 50-55 for conducting trading)—

As per claim 17, Cushing discloses predetermined times for trading. (col. 3, lines 50-55). Further Cushing discloses communications between buyers and sellers. (col. 5, 5-20) for block trades.

As per claim 18 Cushing discloses orders to buy and sell securities in block transactions, (col. 5, lines 1-25)

As per claim 19, Cushing discloses market data indicating block selling interest. (col. 5, lines 1-20). Cushing and Huttenlocher do not explicitly disclose. Communication of market data indicating block trading interest.

The journal of portfolio Management. P. 23, col. 2 discloses yellow light trading which notifies market participants of a block order so that they could take advantage of the block trade by bidding or improving their price. It would therefore have been obvious to

one of ordinary skill in the art at the time of the invention to combine the time period disclosure of Cushing with the notification teachings of The Journal of Portfolio Management for the motivation of providing lower trading costs by alerting buyers to trading opportunities. (p. 20, col. 2, para. 2)

As per claim 21, Cushing discloses the user of reference pricing in the facilitation of trades. (col. 5, lines 1-20) Cushing does not explicitly disclose price aggression. Huttenlocher (0033-36) teaches investor specificity as to levels of aggressiveness in regards to showing his/her order, whereby the investor can specify the block range that would implicitly be calculated to determine if the investor specified aggressive stances are met. It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to combine the block disclosures of Cushing with the investor specified aggressiveness teachings of Huttenlocher for the purpose of creating a confidential trading system that would allow security block sales to be negotiated when the buyer and seller prices are within a reasonable variance.

As per claim 23, Cushing does not explicitly disclose minimum block sizes. Huttenlocher (0105) teaches minimum block requirements where a user can determine minimum order sizes to which his order can be displayed.

It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to combine the trading concepts of Cushing and the block sizes teachings

Huttenlocher for notifying an aggressive party when an opportunity for price improvement arose for the motivation of creating a fair and efficient execution market which is less prone to manipulation. (col. 2, lines 20-40)

Response to Arguments

Claims 1,3-5,14-21,23-26 are presented for examination. Applicant filed an amendment on 8/23/10 amending claims 1, 14, and 20, canceling claims 2, 6-13, and 22 and adding claims 24-26. After careful consideration of the applicant's amendments and arguments, the examiner finds the applicant's arguments to be moot in view of new grounds of rejection.

In an examiner initiated interview of 11/01/10 the examiner called to indicate a concern in regards to for example claim 1. Given that the second order is a buy limit order and the buy order must be less than the reference price which is based in part on market price (at least partially on market data), in order for any crossing of two limit orders to occur (where buy is less than reference), the sell limit order must therefore be equal to the buy order or no cross of the two limit orders could occur. The applicant then specifies that the orders are to cross at a price different from the reference but, minimizing the difference to the reference point which is thus the buy price in this case, potentially all cases unless we are in the NBBO range. (see next paragraph)

From review of the prior art, the NBBO range, ie the market price may have a spread such as 99-100 for example in of itself. Depending on how one places the buy and sell limit orders, various outcomes could occur along the lines of those discussed.

The examiner's concern is that the claims lack clarity requiring the reader to set up the whereabouts of sell order (claim 1) and possibly more than one set of circumstances could be contemplated especially in view of the NBBO range and the fact that reference is not necessarily market, only in part on market.

The examiner suggested claiming where the buy and sell orders are and also how they interrelate to the reference assuming that the reference is based on market. It is it an NBBO type spread which is the reference or is the reference a single price, ie the midpoint of the NBBO or similar. The applicant attorney in the interview of 11/1/10 asked for said clarification in the office action so that a comprehensive strategy to address the identified shortcomings could be contemplated in view of the art rejection. An opportunity for a supplemental was alternatively made available. The examiner agrees that clarifying the exact process of trade execution would move the case forward by claiming the inventive concept.

Conclusion

2. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRUCE I. EBERSMAN whose telephone number is (571)270-3442. The examiner can normally be reached on 630am-5pm, Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571) 272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alexander Kalinowski/
Supervisory Patent Examiner, Art Unit 3691

Bruce I Ebersman
Examiner
Art Unit 3691

